STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission, On its Own Motion	:	
vs.	:	
Central Illinois Light Company, Central Illinois Public Service Company, Commonwealth Edison Company, Illinois Power Company, Interstate Power Company, MidAmerican Energy Company, Mt. Carmel Public Utility Company, South Beloit Water, Gas and Electric Company, and Union Electric Company.	:	Docket No. 00-0494
Proceeding on the Commission's own Motion concerning delivery services tariffs of all Illinois electric utilities to determine what if any changes should be ordered to promote statewide uniformity of delivery services related tariff offerings.	:	

ILLINOIS POWER COMPANY'S BRIEF IN REPLY TO EXCEPTIONS TO THE HEARING EXAMINER'S PROPOSED ORDER

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March 2, 2001

CONTENTS

I. INTRODUCTION AND SUMMARY OF ILLINOIS POWER'S REPLY TO OTHER PARTIES' EXCEPTIONS

Illinois Power Company ("Illinois Power" or "Company") submits this Brief in Reply to Exceptions to the Hearing Examiner's Proposed Order ("Proposed Order") in response to the Briefs on Exceptions ("BOE") filed by the Commission Staff ("Staff"), MidAmerican Energy Company ("MidAmerican" or "MEC"), Commonwealth Edison Company ("ComEd"), AmerenCIPS and AmerenUE ("Ameren"), and jointly by the Illinois Industrial Energy Consumers ("IIEC") and NewEnergy Midwest, L.L.C. ("NewEnergy") (IIEC and New Energy will together be referred to as "IIEC/NE"). Illinois Power did not file a brief on exceptions to the Proposed Order.

IP's position on the contested issues created by the other parties' BOEs is as follows:

SBO Issues

- Contrary to the assertions of IIEC and NewEnergy, IP's internal credit-scoring practice relating to customer payments received from a retail electric supplier ("RES") using the single bill option ("SBO") does not result in the customer failing to get full credit for its delivery services payments to the current RES, and does not require the RES to act as an uncompensated collection agent for amounts owed to IP for prior service. IP's practices are in full compliance with the Proposed Order's conclusions on the SBO issues. The Commission's order should not require any changes to IP's practices in this area. (See §II.A)

- Contrary to MEC's exceptions, IP should not be required to close a customer's account, and open a new account, when the customer switches from IP to a RES or from one RES to another RES. (See §II.B)

- MEC's proposed additional language relating to late fees is unsupported by the record, ambiguous and overbroad, and should not be adopted by the Commission. (See §II.C)

DST Uniformity Issues

- The Proposed Order correctly concludes that further workshops are the best process at this time for achieving additional uniformity in the provision of delivery services. However, consistent with several parties' exceptions, the Commission should establish specific time periods and tentative deadlines for the additional workshops and any subsequent proceedings, in accordance with IP's recommendations in §III.B.1 below.

In all other respects the proposals of MEC, Staff and IIEC/NE to revise the Proposed Order's conclusions on delivery services tariff ("DST") uniformity should be rejected. (See §§III.B. 3 - 5 below)

II. ILLINOIS POWER'S PRACTICES RELATING TO THE SINGLE BILL OPTION ARE ALREADY CONSISTENT WITH THE PROPOSED ORDER'S CONCLUSIONS; ANY SUGGESTION THAT IP'S PRACTICES NEED TO BE REVISED IS INCORRECT AND UNSUPPORTED BY THE RECORD

A. Illinois Power's Internal Credit-Scoring Practice Relating to Payments Received from a RES Using SBO Does Not Result in Customers Failing to Receive Credit for Their Delivery Services Payments and Does Not Require the RES to Act as an Unpaid Collection Agent for Amounts Owed to IP for Prior Service

Illinois Power's practices relating to billing a customer served by a RES using SBO, for amounts owed to IP for bundled service, or for delivery services provided when the customer was served by a prior RES, were fully described in IP's testimony and briefs in this docket. In summary:

- IP **does not** send to the RES prior balances for bundled service provided by IP, or prior balances for delivery services provided by IP when the customer was served by a different RES.

- Rather, IP **only** sends the RES balances due for delivery services incurred while the customer was served by that RES.

- Illinois Power continues to attempt to collect any amounts due for previously-provided bundled service, or amounts due for delivery services provided when the customer was served by a prior RES, **directly from the customer**, by sending bills directly to the customer.

- IP **never** sends the RES a bill for the customer that includes amounts due to IP for bundled services, or for delivery services provided by IP while the customer was served by another RES.

Illinois Power expended considerable resources in developing this system, so that RESs would not have to bill their customers for amounts owed to IP for services provided before the RES acquired the customer. (See IP Ex. 1.3, pp. 14-18; IP Init. Br., pp. 7-8, 12; IP Rep. Br., pp. 6-7)

No witness objected to Illinois Power's practices in this area, and a number of witnesses expressly endorsed them:

- **MEC's witness**, while complaining about the practices of certain other utilities in this area, testified that "IP's current billing practices relating to SBO do not result in any of the problems articulated by other parties in their direct testimonies" (MEC Ex. 6.0, p. 2); that IP's practices "alleviate my concerns regarding RESs being used as an uncompensated collection agency and customer confusion regarding the outstanding balance" (Id., p. 3); and that "IP's current billing system appears to effectively avoid the problems related to unrelated arrearages" (Id.).

- **MEC expressly recognized** that IP had expended "a significant amount of effort" in "setting up a system to track RES bills separately from other customer bills", because "Illinois Power believed suppliers would not believe it was their responsibility to try and collect those balances that had occurred prior to them being involved with that particular customer." (MEC Init. Br., p. 31)

- **Staff** also expressly recognized that "Illinois Power decided not to require single billing suppliers to collect outstanding bundled charges." (Staff Init. Br., p. 4)

- **New Energy's witness** emphasized that IP "**do[es] not** require RESs to collect for unpaid balances for bundled services and thus do[es] not require RESs to include unpaid balances for bundled service on single bills." (NewEnergy Ex. 2 Rev., p. 5; emphasis in original)

- **IIEC and New Energy**, while complaining about certain other utilities' practices, expressly noted that IP has in place a system that allows it to separately track bundled service bills and delivery services bills. (IIEC Init. Br., p. 23)

In their BOE, however, IIEC/NE state:

> The Proposed Order properly concluded that the "revenue associated with delivery services should be applied only to delivery services balance and not applied to an older bundled service balance still owing to the utility." (*See* Proposed Order at 14.) As stated in the reply brief of NewEnergy/IIEC, under the proposals of Ameren, Edison, and Illinois Power Company, customers would not be credited for the bills the customers believe they are paying. (*See* NewEnergy/IIEC Reply Br. at 12-13) Instead, the utilities would post current payments from the RES's SBO bill to the past due utility bundled service balance. (*See id.*) Thus, the practical and financial effect of this practice would have been exactly the same as if the RES actually billed for the past due balance. The Proposed Order properly rejected the attempt by the utilities to "back-door" this issue. New Energy and IIEC respectfully request that the

Commission agree with the legal and policy conclusions set forth by the Hearing Examiner addressing the single bill option issues. (IIEC/NE BOE, pp. 6-7)

In addition, item (5) in the "Conclusion" section of IIEC/NE's BOE requests that an order be entered that "Directs the utilities to conform their delivery services tariffs and policies to separately **account** for those outstanding balances so that the utilities' payment posting policies do not render a RES an uncompensated collection agent." (IIEC/NE BOE, p. 8; emphasis in original)

IIEC and NewEnergy have incorrectly included Illinois Power in the foregoing criticism. IP does account separately for balances due for delivery services provided to the RES' customer and balances due for prior services provided by IP. IP's practices **do not result in a RES being required to bill its customer for amounts previously incurred for bundled service, or for delivery services provided while the customer was served by a prior RES. Nor do IP's practices result in the customer failing to receive full credit for its payments on delivery services billings rendered by the current RES.**[1] IP's practices ***already comply*** with the Proposed Order's conclusion that is quoted at the beginning of the foregoing paragraph from IIEC/NE's BOE. It was for this reason that IP *filed no exceptions to this portion of the Proposed Order.*

IIEC/NE's inclusion of Illinois Power in the BOE paragraph quoted above is presumably based on IP's internal "credit-scoring" procedures that were described in this docket. IP's internal credit-scoring system is used to determine if a disconnection notice will be sent to the customer. One factor taken into account by the internal credit-scoring system is the age of the customer's arrearages -- the older the arrearages, the more likely that a disconnect notice will be issued.[2] IP, therefore,

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[1]IP takes no position on the validity of IIEC/NE's criticisms of any other utility on this issue.

[2]The credit-scoring system considers five factors: the date the account was opened; amount of the arrears; age of the arrears; prior credit contacts with the customer; and whether IP has a

solely for purposes of its internal credit-scoring system, treats customer payments as applying first to the customer's oldest outstanding balance.

By treating the customer's payment in this way for purposes of its internal credit-scoring system, IP **reduces the likelihood that the customer will be disconnected.** Avoiding disconnecting the customer is *beneficial for all interested parties* – the customer (because it continues to receive electric service), the RES (because it continues to sell electricity to the customer), and IP (because it continues to sell delivery services to the customer). (See IP Ex. 1.3, pp. 15-16; IP Ex. 1.5, p. 10; IP Init. Br., pp. 8-9; IP Rep. Br., p. 4)

As the record demonstrates, however, **Illinois Power's internal credit-scoring practice does not affect the manner in which the customer's payments are credited to its delivery services balances for purposes of subsequent billings sent to the RES.** That is, even if IP, for purposes of the credit-scoring system, has applied the customer's payment for delivery services against an older balance due for bundled service, **IP treats the payment as having been applied to the customer's delivery services charges for purposes of the billing information sent to the RES in the following month.**

For example, even if the customer has been billed, and has timely paid to the RES, $5,000 for current delivery services charges, and IP's internal credit-scoring system has applied $2,000 of the $5,000 remitted by the RES to an older bundled service balance and the other $3,000 to the delivery services balance, **the billing information transmitted by IP to the RES in the following month will show $0 unpaid amount due for delivery services provided in the previous month.**

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deposit. (Tr. 255)

Thus, for billing purposes, as between IP and the RES and as between IP and the customer, IP will treat the prior month's bill of $5,000 for delivery services as having been *fully paid*. Further, *IP will continue to try to collect the unpaid bundled service balance* ($2000 in the foregoing example) *directly from the customer, by sending the customer a paper bill.* (See IP Ex. 1.3, pp. 15-16; IP Init. Br., pp. 8-9; IP Rep. Br., p. 4)

The portion of the Proposed Order cited by IIEC and NewEnergy states that "revenue associated with delivery services should be applied only to delivery services balances and not applied to an older bundled balance still owing the utility. If the oldest bundled balance was credited and not the delivery services portion, then the utility could consider the delivery service portion past due." (Proposed Order, pp. 14-15) As the foregoing description of IP's practice shows, however, IP's internal credit-scoring practice **does not result in the delivery service portion of the customer's bill being considered past due.**

The concern expressed by IIEC and NewEnergy at pages 12-13 of their Reply Brief and at pages 6-8 of their BOE is to avoid a utility practice under which "customers would not be credited for the bills the customers believe that they are paying," which would "render a RES an uncompensated collection agent," and under which "the practical and financial effect . . . would have been exactly the same as if the RES actually billed for the past due [bundled service] balance." (IIEC/NE BOE, pp.7, 8; IIEC/NE Rep. Br., p. 13) As the foregoing description of IP's practices shows, IP's internal credit-scoring practice **does not** lead to these results. Nor does IP's practice "result in increased customer confusion." (Id.)

Rather, IP's internal credit-scoring practice is invisible to both the RES and the customer: from both the RES' perspective and the customer's perspective, customer payments for current

delivery services billings are treated as having paid off those billings; and the customer will continue to receive a paper bill (and other collection efforts) directly from IP to attempt to collect the prior bundled service balance.

The only "impact" of IP's *internal credit-scoring practice* on the RES and the customer is the *beneficial* impact that electricity continues to be delivered to a customer *who might have been disconnected had IP's internal credit-scoring system not attributed the customer's payments to the oldest outstanding balance.*[3]

In summary, the types of outcomes IIEC and New Energy are concerned about do not result from Illinois Power's internal credit-scoring practice, nor from IP's billing practices with respect to amounts owed by a RES' customer for previously-provided bundled service or for delivery services provided when the customer was served by another RES. IP's practices are in compliance with the Proposed Order's conclusions at pages 14-15, and with item (5) in the "Conclusion" section of IIEC/NE's BOE. There is no need or basis for the final order to require Illinois Power to make any change to its current practices regarding amounts owed for prior bundled services or prior delivery services provided to a customer that is currently being served by an SBO RES.

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[3]No party has suggested that utilities are prohibited from disconnecting a delivery services customer that is currently receiving power and energy service from a RES if the customer has failed to pay a prior outstanding balance for bundled service. Indeed, the SBO section of the Public Utilities Act, §16-118(b) (220 ILCS 5/16-118(b)), expressly recognizes that an SBO tariff "shall . . . retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services, in the same manner that it would be permitted to if it had billed for the services itself." "Tariffed service" is defined in §16-102 as "services provided to retail customers by an electric utility as defined by its rates on file with the Commission pursuant to the provisions of Article IX of this Act, but shall not include competitive services." (220 ILCS 5/16-102) It would not be in the commercial interests of a RES and its customer for the customer to be disconnected for non-payment of a past-due balance for bundled service.

B. Contrary to MEC's Exceptions, Illinois Power Should Not Be Ordered to Close a Customer's Account, and Open a New Account, when the Customer Switches from IP to a RES or from One RES to Another RES

At page 7 of its BOE, MEC states:

> The HEPO is silent on the practice of including an unpaid balance from a prior retail electric supplier ("RES") on a SBO when a second RES is now providing the delivery services. *MidAmerican also proposed that a customer's account be closed out at the time the customer switches suppliers and that a new account be established. The new account would be separate from any previous delivery service account.* This allows the RES and the customer to begin a billing relationship not confused by charges that are not related to that relationship. (Emphasis added)

However, the specific additional language which MEC proposes for the Proposed Order in connection with this point would only require that any unpaid balances for delivery services provided when the customer was served by a prior RES be billed separately from the balances due for delivery services provided while the customer is served by the current RES. (See MEC BOE, p. 8) MEC's proposed language for the Proposed Order *would not* require the utility to actually close the customer's existing account, and open a new account, at the time the customer switches suppliers.

As described in §II.A above, Illinois Power sends to the customer's current RES only billings for delivery services provided to the customer while it is served by that RES; IP bills the customer separately for any outstanding amounts due for delivery services provided while the customer was served by a prior RES. Thus, IP is already in compliance with the specific language for the Proposed Order set forth at page 8 of MEC's BOE. However, IP would strenuously object to any requirement that it actually close the customer's account and open a new account each time the customer switches suppliers. Imposing such a requirement would be problematic for several reasons:

- Closing a customer's account and opening a new one each time the customer switches suppliers would complicate matters for RESs attempting to obtain historical usage information for the customer from IP, since the customer's usage history would be

split among the current and any prior accounts. IP's Customer Information System ("CIS") does not track account numbers as they change for a customer or link the usage history under a customer's account to the usage history under a previous account. Thus, if the customer' usage history were requested, the only usage IP could provide through CIS would be the usage history for the current account, and not for any prior, closed accounts. (IP Ex. 1.3, p. 17; IP Ex. 1.5, p. 12)

- The approach of closing a customer's account and opening a new one when the customer switches suppliers would cause customer confusion by switching the customer to a new account number each time the customer switches suppliers. (IP Ex. 1.3, p. 17)

- IP's CIS only allows one account to be active at a premise. If a customer's account were closed and a new one opened for service to the same premise, IP's ability to disconnect the account for non-payment of amounts due under the first account would cease, since the account would become inactive (and thus cannot be disconnected). (Id., p. 16)

- IP would still be able to pursue collection efforts against the closed account through manual processes; however, without CIS-driven disconnection, the collection efforts would not be as effective. The manual collection efforts would be more costly, less efficient and less effective than CIS-driven collection efforts. A significant increase in IP's uncollectible accounts would result. (Id., p. 17)

- The practice of closing a customer's account and opening a new one when the customer switches suppliers would create the opportunity for customers to avoid disconnection for non-payment by periodically switching suppliers. (Id.)

Given MEC's overall endorsement of Illinois Power's practices with respect to prior balances and the SBO (see §II.A above), there is no reason that IP should be required to close a customer's account and open a new account when the customer switches suppliers. Indeed, the **MEC witness testified**, with respect to her proposal that utilities be required to close the customer's existing account and open a new one when the customer switches suppliers, that **IP's practice "allows them to accomplish the same goal that I had," albeit through a different methodology.** (Tr. 288)

Thus, there is no basis or need for the Commission to require IP to close a customer's existing account, and open a new account for the customer, when the customer switches suppliers.

C. MEC's Proposed Additional Language Relating to Late Fees Is Unsupported by the Record, Ambiguous and Overbroad, and Should Not be Adopted

At page 7 of its BOE, MEC refers to a "work-around proposal" made by ComEd with respect to the SBO billings issue which, according to MEC, "appeared to permit late fees to be accrued and assessed to the delivery service portion of the bill." MEC then proposes the following additional language for the Proposed Order:

> Given that ComEd has not made a cost recovery proposal in this proceeding, the Commission expresses no opinion as to the reasonableness of these costs or their recovery. *The Commission does note that it would be inappropriate to include late fees associated with prior balances in the current delivery services billings.* (Emphasis added)

Illinois Power takes no position concerning the resolution of whatever dispute may exist between ComEd and MEC with respect to ComEd's "work-around" proposal. However, MEC's proposed language prohibiting late fees is unsupported by the record, ambiguous, and overbroad, and should not be adopted by the Commission.

MEC cites only one page of ComEd's testimony in reference to MEC's concern about late fees, and even as to that citation, MEC characterizes ("appeared to permit") ComEd's testimony. MEC cites no testimony, nor any briefs, in which MEC or any other party took issue with, or proposed an alternative to, ComEd's "apparent" proposal relating to late fees. Thus, the additional language which MEC now proposes on this topic for the final order is devoid of any record support.

Further, MEC's proposed language ("late fees associated with prior balances in the current delivery services billings") is ambiguous. MEC could be suggesting that the current RES should not be asked to bill late fees associated with prior bundled service balances; or it could be suggesting that the RES should not be asked to bill late fees associated with prior months' delivery services billings.

The former could be consistent with the general proposition that an SBO RES should not be required to bill the customer for amounts due for bundled service previously provided by the utility. The latter would be completely unreasonable. However, MEC's proposed language is unclear as to just what it is intended to cover.

Finally, MEC's proposed additional language relating to late fees is overbroad. If there is an issue at all relating to late fees, it apparently derives from a specific "work-around" proposal made by ComEd. MEC's language, however, would prohibit all utilities from including any late fees associated with "prior balances" in the amounts sent to a RES for billing. Such a sweeping prohibition should not be considered without sufficient record support – which is totally lacking here. Accordingly, MEC's proposed additional language for the order relating to late fees should not be adopted by the Commission.

III. THE PROPOSED ORDER CORRECTLY CONCLUDES THAT FURTHER WORKSHOPS ARE THE BEST PROCESS AT THIS TIME FOR ACHIEVING ADDITIONAL UNIFORMITY IN THE PROVISION OF DELIVERY SERVICES; HOWEVER, IP AGREES WITH OTHER PARTIES THAT TIME PERIODS AND TENTATIVE DEADLINES SHOULD BE ESTABLISHED FOR THE WORKSHOPS AND ANY SUBSEQUENT PROCEEDINGS

A. The Hearing Examiner Correctly Concluded That Further Workshops Are the Best Process at this Time for Achieving Additional Uniformity in the Provision of Delivery Services

The Proposed Order appropriately states that "it is the goal of this Commission to arrive at uniform tariff provisions for delivery services tariffs *to the extent possible*," and that "It is not the Commission's intent to mandate identical tariff provisions among the various Illinois delivery services providers." (Proposed Order, p. 8; emphasis added) The Proposed Order concludes that "greater uniformity is desirable," while recognizing that "major impediments to a competitive marketplace lie

outside the Commission's control or jurisdiction." (Id., p. 9) The Proposed Order therefore correctly recognizes that achieving a uniform or pro forma DST should not be an objective in and of itself, but rather that other factors, such as the costs of achieving complete uniformity and the impacts it would have on the further development of the Illinois retail electricity markets, must be taken into account. In other words, "uniformity for uniformity's sake" is not an appropriate objective.

The Proposed Order also correctly "acknowledges that the parties have made great strides towards this uniformity through numerous workshops, both in this docket and many previous ones," and that "through the efforts of the utilities, customers, marketers, and Staff . . . Illinois has developed many common protocols to achieve customer choice." (Id., p. 8) The Proposed Order cites the DASR process as "a case where uniformity has been achieved," and notes that "[t]here are many other instances where uniformity exists." The Proposed Order notes that [t]o some extent, the provisions of the DSTs of the utilities are quite similar, even uniform in concept, but not language," and that "the various existing DSTs . . . are dissimilar with respect to structure, definitions and wording." (Id., p. 9) Thus, the Proposed Order correctly concludes that substantial uniformity has been achieved in the actual business practices used by the utilities to provide delivery services, and that the remaining area in which uniformity has not been achieved is in the structure and wording of the utilities' DSTs.

The Proposed Order appropriately phrases the issue to be resolved as, how best to achieve greater uniformity. (Id.) The Proposed Order resolves this issue as follows:

> . . . the workshop process, if continued, will result in additional uniformity. Pursuing uniformity through Staff-sponsored workshops, rather than through another docketed proceeding, is the appropriate course of action in light of the significant resources that will be devoted to the residential DST filing to be made by all electric utilities this

year. Staff is instructed to continue to conduct workshops to develop common definitions and uniform language. (Id., pp. 8-9)

In reaching this conclusion, which Illinois Power supports, the Proposed Order has agreed with the position of IP and other parties that initiating another litigated proceeding on an expedited basis immediately following the conclusion of this docket would not produce sufficient incremental benefits, in terms of impact on the development of the competitive retail electricity market, to justify the expenditure of resources such a proceeding would require, and the diversion of those resources away from the utilities' delivery services rate cases that are to be filed on or about June 1, 2000. (See IP Init. Br., pp. 16-28; IP Rep. Br., pp. 9-23) In addition, the Proposed Order addresses the lack of uniformity in the structure of the utilities' DSTs by directing that the revised DST outlines submitted by Staff be adopted.[4] (Proposed Order, p. 17)

B. Illinois Power Agrees That It Would Be Appropriate to Establish Time Periods and Tentative Deadlines for the Workshop Process and Any Subsequent Proceedings; in All Other Respects, MEC's, Staff's and IIEC/NE's Proposed Revisions to the Proposed Order's Conclusions Should Be Rejected

1. As Several Parties Suggest, Time Periods and Tentative Deadlines for the Workshops and Any Subsequent Proceedings Should Be Established

MEC, Staff and IIEC/NE each propose various revisions to the Proposed Order's conclusion on the issue of uniform DSTs. Each of these parties' proposals, taken in its entirety, is inappropriate and should be rejected. Illinois Power addresses specifics of each of these parties' proposals below.

However, IP does agree with these parties that it would be appropriate for the Commission

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[4]IP did not take exception to the Proposed Order's conclusion that the revised Staff tariff outlines presented in Staff's Initial Brief should be adopted. ComEd has taken exception to the conclusion that the revised Staff outlines should be adopted, and takes the position that the Joint Outlines developed and presented by ComEd, IP and Ameren should be adopted instead. (ComEd BOE, pp. 22-26) Illinois Power is willing to use either the revised Staff tariff outlines, or the Joint Outlines sponsored by ComEd, IP and Ameren.

to establish a tentative end date for the workshop process, and to provide a procedure for initiating further hearings, if determined by the Commission to be necessary and appropriate after the workshops conclude. Accordingly, after considering the proposals and arguments of MEC, Staff and IIEC/NE, IP recommends that the final order establish the following procedures:

- Additional workshops would be initiated by about May 1, 2001, and continue for six months, until about November 1, 2001 (the dates suggested by IIEC/NE).

- At the conclusion of the workshops, Staff could prepare and submit a report to the Commission that

  (i) identifies the additional stipulations and agreements that have been reached by the parties during the workshops,

  (ii) discusses whether a continuation of the workshops for an additional, defined period of time would be likely to result in additional agreements, and

  (iii) discusses whether it would be a productive and efficient use of the parties' and the Commission's resources to initiate a further litigated proceeding for the purpose of attempting to achieve additional uniformity in the utilities' DSTs.

  (iv) In addition, if not agreed to by the parties in the workshops, the Staff report should address the dates by which utilities would make compliance tariff filings to (1) reorganize their DSTs in accordance with the common outlines adopted by the Commission, and (2) implement any additional agreements reached in the workshops.

  Staff's report should **provide for and include comments on these topics of any other participants that wish to submit comments.** Staff's report should be filed 30 days after the scheduled conclusion of the workshops (that is, around December 1, 2001).[5]

- After receiving the Staff report, the Commission would issue an order (i) adopting the additional stipulations and agreements reached in the workshops, (ii) determining whether workshops should continue, and if so for how long, (iii) determining whether

[5]The order in this docket should state that the parties are not precluded from continuing to hold workshops during the period that the Staff report is being prepared and the Commission is considering the order it will enter in response to the Staff report.

another round of formal hearings should be initiated for the purpose of achieving further uniformity in the utilities' DSTs, and (iv) establishing a date or dates by which the utilities would make compliance tariff filings.

- The objective would be to conclude all proceedings by about August 1, 2002 (as suggested by IIEC/NE), unless the Commission determines in the order entered in December 2001 that workshops should continue for a defined period, in which event the August 1, 2002 date could be extended.

2. MEC's, Staff's and IIEC/NE's Contentions that Further Workshops Will Not Be Productive Are Without Merit

Illinois Power strenuously disagrees with those parties who contend that the additional workshops directed by the Proposed Order will not be productive, and that utilities will not participate in them in a sincere effort to reach additional agreements that result in greater uniformity:

- IIEC/NE assert "there is no realistic expectation the utilities will allow that process to be worthwhile", and suggest that the workshops conducted in this docket were unproductive because they did not produce a pro forma DST. (IIEC/NE BOE, p. 3)

- MEC contends that there have already been numerous workshops which have not produced uniform tariff language, and refers to what it describes as "the depth and breadth of the other utilities' opposition to the adoption of substantive uniformity in this State."[6] (MEC BOE, p. 3)

- Even Staff, while correctly recognizing that "great progress has been made towards uniformity through the use of Staff-sponsored workshops" and that "[u]ndoubtedly, additional workshops have the potential to achieve additional uniformity," asserts that there is no "incentive for the utilities to actively seek uniformity, except in the instances where it suits their interest." [7] (Staff BOE, p. 2)

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[6]It is unclear what MEC means by "the adoption of substantive uniformity." There is general agreement that substantive uniformity in the provision of delivery services – i.e., in the underlying business processes used by the utilities – has already been achieved.

[7]Staff's comment singling out the utilities as acting to "suit their interest" is distressing. Apparently Staff believes that none of the other market participants act in accordance with their respective self-interests. Similarly, IIEC/NE's comment that "most utilities will come to the [upcoming] workshops holding to their parochial interests" (IIEC/NE BOE, p. 3) implies that IIEC and NewEnergy *do not* act according to their own "parochial interests".

These parties' negativity is baseless and unproductive.

Illinois Power has stated repeatedly that it is not opposed per se to ultimate adoption of uniform DSTs. (IP Init. Br., pp. 3, 13, 16; IP Rep. Br., p. 10) Moreover, IP has fully participated in all of the delivery services-related workshops from 1998 to date, and has joined in numerous stipulations and agreements that have resulted in uniformity in the provision of delivery services and minimized the number of issues that needed to be litigated. To the extent that anyone believes there has not been sufficient progress made towards uniformity in prior workshops, IP believes that this has not been due to any recalcitrance on the part of utilities.

Illinois Power's principal issue in this docket with respect to uniformity has *not* been opposition to the concept of uniform DSTs, but rather has been IP's concern over the diversion of resources that would be required for another expedited, litigated proceeding (as proposed by MEC, Staff, IIEC and NewEnergy) at the same time that IP must prepare, file and prosecute its upcoming delivery services rate case. (IP Ex. 1.3, pp. 10-11; IP Ex. 1.5, p. 7; IP Init. Br., pp. 13, 23-27; IP Rep. Br., pp. 11, 20-23) Continuing workshops for approximately six months and then deciding, based on progress to date and further incremental benefits potentially to be gained, whether additional workshops and/or another litigated proceeding would be productive, is an appropriate resolution of these concerns.

Further, complaints that the workshops ordered by the Proposed Order will be unproductive because the earlier workshops in this docket did not produce a uniform DST are unfounded, because **the earlier workshops in this docket were never intended to result in, or even consider, a uniform DST.** Rather, this docket (including its workshops) was initiated to address the list of

specific tariff issues set forth in the Appendix to the Initiating Order.[8] As Staff witness Dr. Schlaf, the facilitator of the workshops in this docket, testified:

> Q. Did the Staff enter this docket with the intention of arriving at pro forma tariffs?
>
> A. No.
>
> Q. Were the workshops that were undertaken once this docket got underway, were any of those workshops undertaken with the intent to arrive at pro forma tariffs?
>
> A. Not with the intent. I guess I can't claim that the subject wasn't broached in some fashion, but it was not the intent of the workshops to arrive at a pro forma tariff. (Tr. 119)
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> * * * * *
>
> Q. Was it your impression that maybe the Commission wanted to see uniform tariffs out of this docket?
>
> A. No.
>
> Q. And you've read the initiating order?
>
> A. Yes. (Tr. 120)[9]

MEC's complaint that the workshops held in this docket did not result in uniform tariff language (MEC BOE, p. 3) is particularly outrageous **since the record shows that MEC withheld its**

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[8]"On the basis of the Commission orders in the individual delivery services tariff proceeding, and the Staff report dated July 6, 2000, the Commission determines that it is appropriate to initiate this proceeding, pursuant to Article XVI and Section 9-250 of the Public Utilities Act, to consider the issues set forth in the Appendix to this Order." (Initiating Order, p. 5)

[9]Dr. Schlaf also testified that "the order that initiated this proceeding, at least to my reading, did not give a clear indication that the purpose of the docket would be to create uniform tariff language." (Staff Ex. 3, pp. 10-11)

proposed pro forma tariffs from the workshop process, where those tariffs might usefully have been discussed by the parties. (Tr. 43, 341; see also Tr. 349)

Finally, and most importantly, **most of the substantial progress that has been made to date in achieving uniformity in the provision of delivery services by the utilities has been achieved in workshops, not through litigated proceedings.** Illinois Power believes the greater progress has been achieved through workshops because the workshops tend to be controlled by business people from the utilities, RESs and customer groups and by Staff technical personnel, working together in a cooperative manner, while formal hearings are a litigated, adversarial process.

As noted earlier, Staff concurs that "great progress has been made towards uniformity through the use of Staff-sponsored workshops." (Staff BOE, p. 2) IIEC/NE, in its Initial Brief in this docket, recognized the substantial progress that has already been made towards uniformity in the workshops held in connection with Dockets 98-0680, 99-0013 and this docket. (See IIEC/NE Init. Br., pp. 27-31; IP Rep. Br., pp. 12-13) The Hearing Examiner has made a wise, and more productive, decision in recommending that further uniformity be pursued through additional workshops, rather than through litigated proceedings as urged by MEC, Staff and IIEC/NE.

The plan Illinois Power has outlined in §II.B.1 above **preserves the Proposed Order's conclusion to proceed with further workshops**, while **placing a reasonable set of time limits and deadlines on the process** (as suggested by MEC, Staff and IIEC/NE). The Commission should adopt this plan as a reasonable resolution of all parties' expressed concerns. The specific revisions to the Proposed Order's conclusions proposed by MEC, Staff and IIEC/ME should be rejected, for the reasons discussed below.

3. MEC's Proposed Revisions to the Proposed Order Should Be Rejected

MEC starts the section of its BOE on the "uniform tariffs" issue by summarizing the Proposed Order's conclusion and stating, "MidAmerican certainly has no objection to conducting additional Staff-sponsored workshops on the issue of uniformity." (MEC BOE, p. 2) However, MEC's specific proposed replacement language for the Proposed Order (MEC BOE, pp. 5-6) would have the Commission approve MEC's original proposal in this docket, namely, that a new proceeding be initiated upon the close of this docket to develop a pro forma DST, using the tariffs submitted by MEC as the starting point, with a final order to be issued no later than September 1, 2001.

The Commission should reject MEC's proposal for the reasons set forth at pages 16-33 of IP's Initial Brief and pages 9-23 of IP's Reply Brief. As set forth in greater detail in IP's prior briefs, the expedited proceeding proposed by MEC to develop a pro forma DST would require a substantial expenditure of resources by the utilities, Staff and other interested parties, and would divert resources from other activities that are more critical to the development of just and reasonable DSTs – without the likelihood of significant incremental benefits being realized, in terms of impact on the development of the retail electricity market, to justify this expenditure and diversion of resources.

Moreover, even in the brief time available in this docket, the parties have identified a sufficient number of problems and issues with MEC's draft pro forma DSTs to render those tariffs unsuitable to be designated as the "starting point" for another, expedited proceeding. (See IP Init. Br., §III.C)

4. Staff's Proposed Revisions to the Proposed Order Should Be Rejected

As an initial matter, Illinois Power notes that Staff states that "Staff interprets the HEPO as recommending that an additional purpose of the workshops would be to develop uniform business practices and *uniform delivery services implementation plans*." (Staff BOE, p. 1; emphasis added)

IP agrees that the workshops should, and will of necessity, consider further uniformity of business practices, because consideration of delivery services tariffs and the underlying business practices for the provision of delivery services go hand-in-hand. However, the Proposed Order's statement that "It has been and continues to be the Commission's intent to have . . . *uniform delivery services implementation plans* . . ." (emphasis added) is unsupported by history.[10] Any suggestion that the parties should devote resources to developing uniform delivery services implementation plans is unwarranted. Developing a uniform delivery services tariff would require effort enough.

Staff's specific proposal in its BOE is as follows:

- Workshops should begin as directed in the Proposed Order.
- By June 30, 2001, Staff should file a report with the Commission informing the Commission of Staff's views as to the progress of the workshops and as to whether it is likely continuing the workshops will achieve concrete results.[11]
- Staff's report would also evaluate whether the residential DSTs filed by the utilities on June 1, 2001 focus primarily on rate matters and not on delivery services terms and conditions.[12]

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[10]IP did not take exception to this statement in the Proposed Order because it is not repeated elsewhere in the Proposed Order, nor carried through to the Findings and Ordering Paragraphs. The objective of achieving uniform DSIPs is not mentioned in the remainder of the Proposed Order's "Conclusion" on the DST uniformity issue. Nor does it appear in the Proposed Order's Findings and Ordering Paragraphs.

[11]Apparently Staff's report would not reflect the views of any other parties on these topics, only those of Staff. Nor does Staff's proposal contemplate that other parties would be allowed to file separate comments directly with the Commission. This is a serious deficiency in Staff's proposal.

[12]For some unexplained reason, Staff mentions only the residential DST filings and not the utilities' filings to revise their non-residential DSTs. IP and other utilities have indicated that they will be filing changes to their non-residential DSTs at the same time that they file their initial residential DSTs. (IP Ex. 1.5, pp. 8-9; Tr. 92, 139, 177, 221, 372)

- If the utilities' filed residential DSTs do not propose a significant number of new terms and conditions, and Staff believes that further workshops would be unproductive, then Staff's report "could" contain a recommendation that the DST rate proceedings be consolidated for the purpose of developing uniform tariff language.

- Alternatively, Staff "could" recommend in its report that the DST rate cases be bifurcated into two proceedings, one a "traditional" rate proceeding and the second to focus on development of terms and conditions. (Staff BOE, pp. 2-6)

Staff's proposed plan should be rejected. It is really nothing more than Staff's original proposal for another expedited proceeding. That proposal was appropriately rejected by the Hearing Examiner, and should be rejected by the Commission, for the same reasons that compel rejection of MEC's similar proposal. (See §III.B.3 of this brief, above)

Illinois Power does not understand why Staff continues to believe that the utilities' June 1, 2001 tariff filings will contain only minimal changes to the terms and conditions in their currently effective DSTs. IP's DST simplification process will comprehensively redraft its current DSTs for the June 1 filing. Further, in the upcoming delivery services rate cases, a number of presently unknown or unanticipated tariff issues may arise relating to residential delivery services, which will be under consideration by the parties and the Commission for the first time. (See IP Ex. 1.5, pp. 5, 8-9; IP Init. Br., pp.21-22; Tr. 231-32, 433-34)

Finally, to the extent that Staff is suggesting that the DST rate cases should be consolidated, or that those cases should be bifurcated and the portions relating to delivery services terms and conditions should be consolidated, any such suggestion is premature at best. The Commission rejected requests to consolidate the initial DST rate cases in 1999, and there is no information at this time to suggest that consolidation of the 2001 DST cases will be any more appropriate.[13] In any

[13]To the extent that requests to consolidate the 1999 DST rate cases were a response to the time pressures associated with having to litigate the cases for all nine electric utilities simultaneously

event, any decision to consolidate the 2001 DST cases, in whole or in part, should be made after those cases are filed, based on the particular considerations manifested by those filings.

5. IIEC/NE's Proposed Revisions to the Proposed Order Should Be Rejected

As indicated above, Illinois Power essentially agrees with IIEC/NE's proposed modifications to the Proposed Order that would (i) specify that the additional workshops should begin by May 1, 2001 and be conducted for six months after the conclusion of this docket, and (ii) provide for completion of the workshops and any additional hearings by approximately August 1, 2002.

Other than those dates and time periods, however, which IP considers reasonable, IIEC/NE's proposed revisions to the Proposed Order are the most outlandish of all. IIEC and NewEnergy would have the Commission direct **Staff** to take from the record what **Staff believes to be** the "appropriate" objections and criticisms rendered to the draft pro forma DSTs filed by MEC, and to modify those tariffs accordingly to be the "target" tariffs for the workshop process. IIEC/NE would then have the Commission designate the **Staff-modified** MEC DSTs (as further modified by any additional agreements reached in the workshops) as the presumptive pro forma DSTs in formal hearings which would follow the workshops. Utilities and other parties would have the burden of proof to show why any further modifications should be made to the **Staff-modified** MEC DSTs.

IIEC/NE's proposal goes well beyond even the original MEC and Staff proposals in this docket, or any other proposal that was ever submitted in the record. Both MEC and Staff had

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in a six-month period, those pressures will be greatly alleviated by the utilities' tentative agreements to file their 2001 DST cases by June 1, 2001, thereby providing ten months for litigation of the cases. Further, two of the utilities, AmerenUE and AmerenCIPS, filed their DST cases in December 2000, so their cases will not substantially overlap with the other utilities' upcoming DST cases. The fact that the two Ameren cases are proceeding some six months in advance of the other utilities' cases will also make any consolidation problematic.

proposed that, in the new proceeding which they recommended be commenced immediately after this docket, (i) any party could submit a proposed pro forma DST, or specific modifications to the draft MEC tariffs, (ii) no presumption of correctness would be assigned to any party's proposed pro forma DST, including MEC's tariff, and (iii) any utility would be allowed to file individual DST provisions that varied from the final, approved pro forma DST. (Staff Init. Br., pp. 15-16; Staff Ex. 3, p. 12; MEC Ex. 1.0, p. 13; MEC Ex. 5.0, pp. 12-15, 18, 25-27, 32-33, 39; Tr. 33, 74-77, 79, 81, 361, 363-64) These beneficial safeguards, however, are missing from the IIEC/NE's proposal.

Moreover, IIEC/NE's proposal is legally deficient because it could result in the presumptive pro forma DST, which all utilities would be required to adopt, **being determined by Staff, not by the Commission.** IIEC/NE would have the Commission ***delegate to Staff*** authority to determine what modifications should be made to the pro forma DSTs filed by MEC in this docket, with no ultimate determination by the Commission as to what the content of the pro forma DSTs should be.

Nor, apparently, would IIEC/NE allow any opportunity for other parties to provide input into Staff's determinations, beyond the comments and criticisms provided in this docket by ComEd and IP in the limited time available after MEC filed its draft tariffs. Even those limited comments, however, raised numerous, substantial issues about MEC's draft tariffs. (See IP Init. Br., pp. 29-33) If the draft MEC tariffs are ultimately to serve as the basis for the development of a uniform DST, those issues, and any other issues that are identified with respect to the MEC tariffs, must be resolved by the Commission, not by Staff.

IV. CONCLUSION

For the reasons set forth in this Brief in Reply to Exceptions, the Commission's order:

(1) Should not require Illinois Power Company to make any changes to its practices relating to billing a customer served by an SBO RES for amounts due for bundled service previously provided by IP, or for delivery services provided by IP when the customer was served by a prior RES;

(2) Should not require IP to close a customer's account, and open a new account, when the customer switches suppliers;

(3) Should not adopt MEC's proposed additional language relating to late fees; and

(4) Should adopt the Proposed Order's conclusions with respect to conducting additional workshops to attempt to achieve greater uniformity in the utilities' DSTs, as modified by IP's proposals relating to schedule and timing (§III.B.1 above).

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused copies of Illinois Power Company's Brief in Reply to Exceptions to the Hearing Examiner's Proposed Order in Docket No. 00-0494 to be served on the persons shown on the attached service list by placing copies in the U.S. Mail properly addressed and with postage prepaid on March 2, 2001.

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